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# **Supreme Court of the United States**

**October Term, 1961**

**No. 358**

**LAUREANO MAYSONET GUZMAN,**  
**PETITIONER,**

**v.**

**RAMON RUIZ PICHIRILO,**  
**RESPONDENT.**

**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT.**

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## INDEX

	Page
Opinions Below .....	1
Jurisdiction .....	2
Questions Presented .....	2
Statutes Involved .....	3
Statement of The Case .....	4
<b>Reasons Relied On For Granting The Writ:</b>	
A. The Court of Appeals for the First Circuit Has Decided a Federal Question Directly In Conflict With Decisions of Other Courts of Appeals and Other Federal District Courts. ....	7
B. The Court of Appeals for the First Circuit Has Decided a Question of Admiralty and Maritime Law in Conflict with the Authoritative Decisions of This Court. ....	10
Conclusion .....	14
Appendix — Opinion of the Court of Appeals .....	15

### CASES CITED

<i>Alaska S.S. Co., Inc. v. Petterson</i> , 347 U.S. 396, 74 S. Ct. 601, 98 L. Ed. 798 .....	12
<i>The Barnstable</i> , 181 U.S. 464, 21 S. Ct. 684, 45 L. Ed. 954 .....	11
<i>Burns Bros. v. The Central R.R. of New Jersey</i> , 202 F.2d 910 .....	7, 8
<i>Cannella v. Lykes Bros. S.S. Co.</i> , 174 F.2d 794, certi- orari denied, 338 U.S. 859, 70 S. Ct. 102, 94 L. Ed. 526 .....	7, 8
<i>The China</i> , 74 U.S. (7 Wall.) 53, 19 L. Ed. 67 .....	11
<i>Crumady v. The Joachim Hendrik Fisser</i> , 358 U.S. 423, 79 S. Ct. 445, 3 L. Ed. 2d 413 .....	11, 12
<i>Grilleau v. United States</i> , 232 F.2d 919 .....	7, 8, 9, 10
<i>Leotta v. S.S. Esparta</i> , 188 F. Supp. 168 .....	9
<i>McAllister v. United States</i> , 348 U.S. 19, 75 S. Ct. 6, 99 L. Ed. 20 .....	13

	Page
<i>Mahnich v. Southern Steamship Co.</i> , 321 U.S. 96, 64 S. Ct. 455, 88 L. Ed. 561 .....	12
<i>The Malek Adhel</i> , 43 U.S. (2 How.) 210, 11 L. Ed. 239 .....	11
<i>Mitchell v. Trawler Racer, Inc.</i> , 362 U.S. 539, 80 S. Ct. 926, 4 L. Ed. 2d 941 .....	12
<i>Noel v. Isbrandtsen Company</i> , 287 F.2d 783 .....	7, 10
<i>The Palmyra</i> , 25 U.S. (12 Wheat.) 1, 6 L. Ed. 531 .....	11
<i>Pope &amp; Talbot, Inc. v. Hawk</i> , 346 U.S. 406, 74 S. Ct. 202, 98 L. Ed. 143 .....	12
<i>Queen of the Pacific</i> , 180 U.S. 49, 21 S. Ct. 278, 45 L. Ed. 419 .....	11
<i>Reed v. United States</i> , 78 U.S. (1 Wall.) 591, 20 L. Ed. 220 .....	14
<i>Reed v. The Yaka</i> , 183 F. Supp. 69 .....	9, 13
<i>Rogers v. United States Lines</i> , 347 U.S. 984, 74 S. Ct. 849, 98 L. Ed. 1120 .....	12
<i>Ryan Stevedoring Co., Inc. v. Pan Atlantic S.S. Corp.</i> , 350 U.S. 124, 76 S. Ct. 232, 100 L. Ed. 133 .....	9, 12
<i>Seas Shipping Co. v. Sieracki</i> , 328 U.S. 85, 66 S. Ct. 872, 90 L. Ed. 1099 .....	9, 12
<i>United New York and New Jersey Sandy Hook Pilots Ass'n. v. Halecki</i> , 358 U.S. 613, 79 S. Ct. 517, 80 S. Ct. 926, 3 L. Ed. 2d 541 .....	12
<i>Vitozi v. Balboa Shipping Co.</i> , 163 F.2d 286 .....	7
<i>Vitozi v. S.S. Platano</i> , 1950 A.M.C. 1686 .....	8, 9
<i>The Western Maid</i> , 257 U.S. 419, 42 S. Ct. 159, 66 L. Ed. 299 .....	8, 11

#### STATUTES

Constitution, Article 3, Sec. 2 .....	3
Longshoremen's and Harbor Worker's Compensation Act, Title 33 U.S.C., § 905 .....	7, 13
Puerto Rico Workmens' Accident Compensation Act, Title 11 L.P.R.A., Sec. 21 .....	4, 13

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## **PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.**

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To The Honorable The Chief Justice and The Associate  
Justices of The Supreme Court of The United States.

The petitioner, by his counsel, Max Goldman, respectfully petitions this Honorable Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit which reversed the decree in favor of petitioner and dismissed petitioner's libel filed in the United States District Court for the District of Puerto Rico, and in support of his petition, does show:

1. The opinion of the United States Court of Appeals for the First Circuit is not reported as of this date, and is

appended hereto at pages 15-21 *infra*. The opinion of the United States District Court for the District of Puerto Rico was not reported and appears in the certified record at pages 56-58.

2. The judgment of the United States Court of Appeals for the First Circuit vacating the judgment of the District Court of Puerto Rico and remanding for entry of a judgment of dismissal is dated May 29, 1961.

### **Jurisdiction**

The jurisdiction of this Honorable Court to review by way of writ of certiorari is based on United States Code, Title 28, Sections 1254(1) and 2101(c) and Supreme Court Rules, Rule 19, Subsection 1(b).

### **Questions Presented**

3. The questions presented for review are:

A 1. Is a vessel in the possession and control of a demise charterer liable *in rem* for injuries to a longshoreman caused by the unseaworthiness of the vessel, if the unseaworthy condition is created while the demise charterer is in possession and control?

A 2. Is a vessel in the possession and control of a demise charterer liable *in rem* for injuries to a longshoreman caused by the unseaworthiness of the vessel, if the unseaworthy condition is created while the demise charterer is in possession and control, and if the demise charterer is also the stevedore-employer insured under a system of workmen's compensation?

These questions comprise other issues e.g.: whether a vessel may be liable *in rem* for unseaworthiness if there is



no *in personam* liability on the part of the owner or demise charterer; whether the longshoreman's right to a seaworthy vessel is extinguished by his employer becoming the demise charterer; whether the shipowner's duty to furnish a seaworthy vessel may be contracted away by the device of a demise charter; and, whether the stevedore-employer can avoid the obligation of indemnifying the shipowner for an unseaworthy condition that he, the employer, creates by acquiring the vessel under a demise charter.

B. Does the Court of Appeals have the power to reverse findings of fact, based in whole or in part upon the credibility of witnesses, in an admiralty matter on its own independent reading of the record?

Necessarily contained in this question are the subsidiary questions of whether an appeal in admiralty is a trial *de novo* and whether a Court of Appeals has the right to reverse the District Court's findings if not clearly erroneous.

4. The constitutional provisions involved are:  
United States Constitution, Article 3, Section 2:

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citi-

zens thereof, and foreign States, Citizens or Subjects."

The statute involved is:

Laws of Puerto Rico Annotated, Title 11, Section 21:

"When an employer insures his workmen or employees in accordance with this chapter, the right herein established to obtain compensation shall be the only remedy against the employer; but in case of accident to, or disease or death of, the workmen or employees not entitled to compensation under this chapter, the liability of the employer is, and shall continue to be, the same as if this chapter did not exist."

#### Statement of the Case

The petitioner, a longshoreman, was injured on board the M/V CARIB, of Dominican registry, when the shackle on the boom broke causing it to fall and strike him on the head. He sustained severe and permanent injuries. Suit was commenced in the United States District Court for the District of Puerto Rico, in Admiralty, by a libel filed on December 5, 1958.

Jurisdiction was based on the admiralty and maritime jurisdiction of the United States and both *in rem* and *in personam* remedies were sought against the vessel and the owner. The vessel was seized, pursuant to lawful process on December 10, 1958. The vessel and owner appeared on December 23, 1958 by filing a claim in the form of a motion.

In the answer, the respondents averred that the vessel had been "chartered" to Bordas & Co., of San Juan, Puerto

Rico, the stevedore employer of the petitioner. The affirmative defenses alleged, *inter alia*, the receipt of compensation by petitioner, and the charter and surrender of control of the area wherein the accident occurred.

Introduced into evidence at the trial was a deposition of the master, a Dominican, who characterized himself as an employee of the respondent and referred to the stevedore as a third-party, incorrectly translating its name into Spanish. Aside from a physician, the only witness who appeared for the respondents was the principal officer of the stevedore employer. He testified:

"Q. Will you please state your connection with Ruiz Pichirilo in this case? A. He has been a business relation of ours for many years. We have been managing and operating the "Carib" for around five years. He lives in the Dominican Republic." (R. 51).

At the close of all the testimony, respondent's proctor requested time to file a memorandum based on the defense that Ramon Ruiz Pichirilo was not liable because he had no control of the vessel. Thereupon the following colloquy took place:

"The Court: Of course, you know pretty well the doctrine in Admiralty that there is a non-delegable duty, no matter who was managing this thing, or who was paying for the payroll and expenses and every thing. Mr. Bordas clearly stated that the boat belongs to Pichirilo, and if Pichirilo isn't coming here it is because he can not leave the Dominican Republic, but he is the owner, the operator of the boat.

"Mr. Rodriguez: No, the owner, not the operator. The operator is Bordas and Company.



"The Court: That may be what you think, but I don't believe that Bordas is the operator of the boat."  
(R. 55).

No contracts, charter parties nor any other document corroborating Bordas' interest in the vessel was offered. In its opinion the District Court stated that it could find no lawful basis for holding that the vessel was under a demise charter (R. 57) and in its findings found that the owner was in possession and control of the M/V CARIB. (R. 58).

The United States Court of Appeals did not question the fact that the vessel was unseaworthy. The reversal was predicated upon this Court's interpretation that the evidence showed a demise charter by parole and could admit no other interpretation. A demise charterer being *pro hac vice* the owner, the Court of Appeals reasoned, the true owner could not be liable *in personam*. Despite the fact that the demisee created the unseaworthy condition, it could not be liable *in personam* because as stevedore-employer it was insulated by the exclusive remedy provisions of the Workmen's Accident Compensation Act of Puerto Rico.

The Court of Appeals then held that a vessel could not be liable *in rem*, if there were no *in personam* liability, even if the vessel were unseaworthy and it ordered the dismissal of the libel.

In its opinion, the Court of Appeals for the First Circuit frankly admitted that its holding was directly in conflict with decisions of other United States Courts of Appeals and other United States District Courts.

### **Argument**

**A. THE COURT OF APPEALS FOR THE FIRST CIRCUIT HAS DECIDED A FEDERAL QUESTION DIRECTLY IN CONFLICT WITH DECISIONS OF OTHER COURTS OF APPEALS AND OTHER FEDERAL DISTRICT COURTS.**

The decision of which review is sought is irreconcilable with three decisions of the United States Court of Appeals for the Second Circuit.

*Grillea v. United States*, 1956, 232 F2 919,

*Burns Bros. v. The Central R.R. of New Jersey*, 1953, 202 F.2d 910.

*Cannella v. Lykes Bros. S.S. Co.*, 1949, 174 F2 794, certiorari denied, 338 U.S. 859, 70 S. Ct. 102, 94 L. Ed. 526.

Despite the reliance upon the decision as authority, it is submitted that the opinion of the court below is irreconcilable with the decision of the United States Court of Appeals for the Fourth Circuit in *Noel v. Isbrandtsen Co.*, 1961, 287 F2 783.

Chronologically, the first case involving some of the precise issues involved in the case at bar was *Vitozi v. Balboa Shipping Co.*, 1 Cir., 1947, 163 F2d 286, wherein it was held that an owner who had surrendered control by a demise was not liable *in personam* for unseaworthiness.

Libellant, in that case, a longshoreman, later filed an *in rem* action against the vessel in the Southern District of New York. That case was dismissed upon the ground that the demisee was the stevedore-employer whose liability under the Longshoremen's and Harbor Worker's Compensation Act, 33 U.S.C. 905, was exclusive and the vessel,